ORACLE SOFTWARE AS A SERVICE AGREEMENT V 121509

IMPORTANT-READ THIS ORACLE SOFTWARE AS A SERVICE AGREEMENT (THIS "AGREEMENT") CAREFULLY BEFORE CONTINUING REGISTRATION. BY CLICKING THE "I ACCEPT" BUTTON OR OTHERWISE ACCEPTING THIS AGREEMENT THROUGH AN ORDERING DOCUMENT THAT INCORPORATES THIS AGREEMENT (THE "ORDERING DOCUMENT"), YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND, IN SUCH EVENT, "YOU" AND "YOUR" AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY, IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, YOU MUST SELECT THE "I DECLINE" BUTTON AND MAY NOT USE THE SERVICES.

A. Agreement Definitions

"You" and "your" refers to the individual or entity that has ordered software as a service from Oracle Corporation UK Limited ("Oracle") or an authorized distributor by executing the ordering document that accompanies and incorporates this Oracle software as a service agreement (collectively, the "agreement"). Software as a service consists of system administration, system management, and system monitoring activities that Oracle performs for Oracle programs, and includes the right to use the Oracle programs, support services for such Oracle programs, as well as any other services provided by Oracle, as defined in the ordering document (collectively, the "services"). The term "program documentation" refers to the program user manual as well as any other materials provided by Oracle as part of the services. The term "Oracle programs" refers to the software products owned or distributed by Oracle to which Oracle grants you access as part of the services, including program documentation, and any program updates provided as part of the services. The term "users" shall mean those individuals authorized by you or on your behalf to use the services, as defined in the ordering document. The term "your data" refers to the data provided by you that resides in your services environment. The term "ordering document" refers to the ordering document signed by the parties that accompanies and incorporates this software as a service agreement, including the services policies and any other document referenced or incorporated into the ordering document.

B. Applicability of Agreement

This software as a service agreement is valid for the ordering document which this agreement accompanies.

C. Rights Granted

Upon Oracle's acceptance of your order and for the duration of the services term defined in the ordering document, you have the nonexclusive, non-assignable, royalty free, worldwide limited right to use the services solely for your internal business operations and subject to the terms of the agreement. You may allow your users to use the services for this purpose and you are responsible for your users' compliance with the agreement. The services are provided as described in, and subject to, the services policies referenced in the ordering document.

You acknowledge that Oracle has no delivery obligation and will not ship copies of the Oracle programs to you as part of the services. You agree that you do not acquire under the agreement any license to use the Oracle programs specified in the ordering document in excess of the scope and/or duration of the services. Upon the end of the agreement or the services thereunder, your right to access or use the Oracle programs specified in the ordering document and the services shall terminate.

D. Ownership and Restrictions

You retain all ownership and intellectual property rights in and to your data. Oracle or its licensors retain all ownership and intellectual property rights to the services and Oracle programs. Oracle retains all ownership and intellectual property rights to anything developed and delivered under the agreement.

Third party technology that may be appropriate or necessary for use with some Oracle programs is specified in the program documentation or ordering document as applicable. Your right to use such third party technology is governed by the terms of the third party technology license agreement specified by Oracle and not under the agreement.

You may not:

- remove or modify any program markings or any notice of Oracle's or its licensors' proprietary rights;
- make the programs or materials resulting from the services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from the services you have acquired);

- modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to Oracle;
- disclose results of any services or program benchmark tests without Oracle's prior written consent; and
- license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the services, Oracle programs or materials available, to any third party other than, as expressly permitted under the terms of the agreement.

The rights granted to you under the agreement are also conditioned on the following:

- the rights of any user licensed to use the services (e.g., on a "named user" basis) cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user, in which case the prior authorized user shall no longer have any right to access or use the license);
- except as expressly provided herein, no part of the services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and
- you agree to make every reasonable effort to prevent unauthorized third parties from accessing the services.

E. Warranties, Disclaimers and Exclusive Remedies

Oracle warrants that the services will perform in all material respects in accordance with the services policies referenced in the ordering document. If the services provided to you for any given month during the services term were not performed as warranted, you must provide written notice to Oracle as specified in the ordering document no later than five business days after the last day of that particular month or within such other period stated in the ordering document.

ORACLE DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT ORACLE WILL CORRECT ALL SERVICES ERRORS. YOU ACKNOWLEDGE THAT ORACLE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. ORACLE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

FOR ANY BREACH OF THE ABOVE WARRANTIES, ORACLE WILL REMIT A SERVICES FEE CREDIT TO YOU CALCULATED AT TEN PERCENT (10%) OF NET MONTHLY FEES FOR THE APPLICABLE SERVICES FOR THE MONTH IN WHICH THE BREACH OCCURRED. THE CREDIT WILL BE PROVIDED ONLY TOWARDS ANY OUTSTANDING BALANCE FOR SERVICES OWED TO ORACLE, AND THE REMITTANCE OF SUCH CREDIT WILL REPRESENT YOUR EXCLUSIVE REMEDY, AND ORACLE'S SOLE LIABILITY, FOR ALL BREACHES OF ANY WARRANTY SPECIFIED IN THE AGREEMENT.

TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND ALL OTHER WARRANTIES OR CONDITIONS OR TERMS WHETHER EPXRESS OR IMPLIED ARE EPXRESSLY EXCLUDED, INCLUDING FOR HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

F. Trial Use of the Services

If specified in the ordering document, you may order certain services for trial, nonproduction purposes subject to the terms and conditions of the agreement. Services acquired for trial purposes are provided "as is" and Oracle does not offer any warranties for such services.

G. Indemnification

If a third party makes a claim against either you or Oracle ("Recipient" which may refer to you or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, or material ("Material") furnished by either you or Oracle ("Provider" which may refer to you or Oracle depending on which party provided the Material), and used by the Recipient infringes its intellectual property rights, the Provider, at its sole cost and expense, will

defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- gives the Provider sole control of the defense and any settlement negotiations; and
- gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim.

If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Oracle's ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order. The Provider will not indemnify the Recipient if the Recipient alters the Material or uses it outside the scope of use identified in the Provider's user documentation or services policies or if the Recipient uses a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon (i) any information, design, specification, instruction, software, data, or material not furnished by the Provider, or (ii) any Material from a third party portal or other external source that is accessible to you within or from the service (e.g., a third party Web page accessed via a hyperlink). Oracle will not indemnify you to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by Oracle. Oracle will not indemnify you for infringement caused by your actions against any third party if the services as delivered to you and used in accordance with the terms of the agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify you for any infringement claim that is based on: (1) a patent that you were made aware of prior to the effective date of the agreement (pursuant to a claim, demand, or notice); or (2) your actions prior to the effective date of the agreement. This section provides the parties' exclusive remedy for any infringement claims or damages.

H. Support Services

Support services provided under the agreement are specified in the services policies referenced in the ordering document.

I. End of Agreement

Services provided under this software as a service agreement shall be provided for the period defined in the ordering document unless earlier terminated in accordance with the agreement. The term of the services and any renewal years are collectively defined as the "services term." At the end of the services term, all rights to access or use the services, including the Oracle programs listed in the ordering document, shall end.

If either of us breaches a material term of the agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the applicable ordering document under which the breach occurred. If Oracle ends the ordering document as specified in the preceding sentence, you must pay within 30 days all amounts which have accrued prior to such end, as well as all sums remaining unpaid for the services ordered under the agreement plus related taxes and expenses. If Oracle ends the services under the Indemnification section, you must pay within 30 days all amounts remaining unpaid for services plus related taxes and expenses. The nonbreaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if you are in default under the agreement, you may not use the services ordered. You further agree that if you have used an Oracle Financing Division contract to pay for the fees due under an order and you are in default under that contract, you may not use the services that are subject to such contract.

In addition, Oracle may immediately suspend your password, account, and access to or use of the services (i) if you fail to pay Oracle as required under the agreement and do not cure within the first ten days of the 30 day cure period, or (ii) if you violate any provision within sections C, D, N or R of this software as a service agreement. Oracle may terminate the services hereunder if any of the foregoing is not cured within 30 days after Oracle's initial notice thereof. Any suspension by Oracle of the services under this paragraph shall not excuse you from your obligation to make payment(s) under the agreement.

At your request, and for a period of up to 60 days after the termination of the applicable ordering document, Oracle may permit you to access the services solely to the extent necessary for you to retrieve a file of your data then in the services environment.

You agree and acknowledge that Oracle has no obligation to retain your data and that your data may be irretrievably deleted after 60 days following the termination of the ordering document.

Provisions that survive termination or expiration of the agreement are those relating to limitation of liability, infringement indemnity, payment, and others which by their nature are intended to survive.

J. Fees and Taxes

You agree to pay for all services ordered as set forth in the applicable ordering document. All fees due under the agreement are non-cancelable and the sums paid nonrefundable. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the services you ordered, except for taxes based on Oracle's income. You will reimburse Oracle for reasonable expenses related to providing any on-site portion of the services. Fees for services listed in an ordering document are exclusive of taxes and expenses. All amounts invoiced hereunder are due and payable within 30 days of the date of the invoice.

You agree that you have not relied on the future availability of any services, programs or updates in entering into the payment obligations in the ordering document; however, the preceding does not relieve Oracle of its obligation to deliver services that you have ordered per the terms of the agreement.

K. Nondisclosure

By virtue of the agreement, the parties may have access to information that is confidential to one another ("confidential information"). We each agree to disclose only information that is required for the performance of obligations under the agreement. Confidential information shall be limited to the terms and pricing under the agreement, your data residing in the services environment, and all information clearly identified as confidential at the time of disclosure.

A party's confidential information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

We each agree to hold each other's confidential information in confidence for a period of three years from the date of disclosure. Also, we each agree to disclose confidential information only to those employees or agents who are required to protect it against unauthorized disclosure in a manner no less protective than under the agreement. Oracle will protect the confidentiality of your data residing in the services environment in accordance with the Oracle security practices specified in the services policies referenced in the ordering document. Nothing shall prevent either party from disclosing the terms or pricing under the agreement in any legal proceeding arising from or in connection with the agreement or from disclosing the confidential information to a governmental entity as required by law.

L. Entire Agreement

You agree that the agreement (including the information which is incorporated into the agreement by written reference (including reference to information contained in a URL or referenced policy), is the complete agreement for the services ordered by you, and that the agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such services. Nothing in this agreement excludes or limits Oracle's liability for deceit or fraudulent misrepresentation. If any term of the agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of the agreement. It is expressly agreed that the terms of the agreement, including any Oracle ordering document, shall supersede the terms in any purchase order or other non-Oracle document and no terms included in any such purchase order or other non-Oracle document shall apply to the services ordered. The agreement may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the Oracle Store by authorized representatives of you and of Oracle.

M. Limitation of Liability

NOTHING IN THIS AGREEMENT SHALL LIMIT ORACLE'S LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY THE NEGLIGENCE OF ORACLE, OR ORACLE'S LIABILITY IN THE TORT OF DECEIT. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THE AGREEMENT), DATA, OR DATA USE. ORACLE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS SOFTWARE AS A SERVICE AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO ORACLE FOR

THE SERVICES UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE IN YOUR FAVOR AGAINST ORACLE SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY YOU UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.

N. Export

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the services. You agree that such export control laws govern your use of the services (including technical data) and any services deliverables provided under thes agreement, and you agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, software programs and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

O. Other

1. Oracle is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance.

2. You shall obtain at your sole expense any rights and consents from third parties necessary for Oracle and its subcontractors to perform the services under the agreement.

3. This agreement is governed by English law and both you and Oracle agree to submit to the exclusive jurisdiction of the courts of England and Wales in any dispute arising out of or relating to this agreement.

4. If you have a dispute with Oracle or if you wish to provide a notice under the Indemnification section of this software as a service agreement, or if you become subject to insolvency or other similar legal proceedings, you will promptly send written notice to: Oracle Corporation UK Limited, Oracle Parkway, Thames Valley Park, Reading, Berkshire RG6 1RA**,** marked for the attention of the Director of Legal Services, Legal Department. Oracle may give notice applicable to Oracle's software as a service customer base by means of a general notice on the Oracle portal for the services, and notices specific to you by electronic mail to your e-mail address on record in Oracle's account information or by written communication sent by first class mail or pre-paid post to your address on record in Oracle's account information.

5. You may not assign the agreement or give or transfer the services or an interest in them to another individual or entity. If you grant a security interest in any portion of the services, the secured party has no right to use or transfer the services or any deliverables, and if you decide to finance your acquisition of the services, you will follow Oracle's policies regarding financing which are at http://oracle.com/contracts.

6. Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to the agreement may be brought by either party more than two years after the cause of action has accrued.

7. Oracle may audit your use of the services. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with your normal business operations. You agree to pay within 30 days of written notification any fees applicable to your use of the services in excess of your rights. If you do not pay, Oracle can end your services and/or the agreement. You agree that Oracle shall not be responsible for any of your costs incurred in cooperating with the audit.

8. A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act of 1999 to enforce any term of this agreement but this does not affect any right or remedy of a third party that exists or is available apart from that Act. You understand that Oracle's business partners, including any third party firms retained by you to provide computer consulting services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for nor bound by any acts of any such business partner, unless the business partner is providing services as an Oracle subcontractor on an engagement ordered under this software as a service agreement.

P. Force Majeure

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both

will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for the services.

Q. Your Data

In performing the services, Oracle will comply with the *Oracle Services Privacy Policy*, which is available at http://www.oracle.com/html/services-privacy-policy.html and incorporated herein by reference. The *Oracle Services Privacy Policy* is subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of protection provided for your data during the period for which fees for the services have been paid. The services policies referenced in your ordering document specifies our respective responsibilities for maintaining the security of your data in connection with the services.

Oracle reserves the right to provide the services from locations, and/or through use of subcontractors, worldwide. Oracle subscribes to the United States/European Union Safe Harbor Principles, and as a result, appears on the U.S.Department of Commerce Safe Harbor list (available at http://www.export.gov/safeharbor) as of the effective date of this software as a service agreement. Oracle's Safe Harbor certification specifically includes Oracle's performance of hosting services for customer provided personal information.

You agree to provide any notices and obtain any consents related to your use of the services and Oracle's provision of the services, including those related to the collection, use, processing, transfer and disclosure of personal information. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of your data.

R. Restrictions on Use of the Services

You agree not to use or permit use of the services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Oracle under the agreement, Oracle reserves the right to remove or disable access to any material that violates the foregoing restrictions. Oracle shall have no liability to you in the event that Oracle takes such action. You agree to defend and indemnify Oracle against any claim arising out of a violation of your obligations under this section.

S. Services Tools

Oracle may use tools, scripts, software, and utilities (collectively, the "tools") to monitor and administer the services and to help resolve your Oracle service requests. The tools will not collect, report or store any of your data residing in the service production environment, except as necessary to troubleshoot service requests or other problems in the service. Data collected by the tools (excluding production data) may also be used to assist in managing Oracle's product and service portfolio and for license management. You agree that (a) except as set forth in the following paragraph, you may not access or use the tools, and (b) you will not use or restore the tools from any tape backup at any time following termination of the agreement.

If Oracle provides you with access to or use of any tools in connection with the services, your right to use such tools is governed by the license terms that Oracle specifies for such tools; however, if Oracle does not specify license terms for such tools, you shall have a non-transferable, non-exclusive, limited right to use such tools solely to facilitate your administration and monitoring of your services environment, subject to the terms of the agreement. Any such tools are provided by Oracle on an "as is" basis and Oracle does not provide technical support or offer any warranties for such tools. Your right to use such tools will terminate upon the earlier of Oracle's notice (which may be through posting on https://support.oracle.comor such other URL designated by Oracle), the end of the services term, or the date that the license to use such tools ends under the license terms specified for such tools.

T. Statistical Information

Oracle may compile statistical information related to the performance of the services, and may make such information publicly available, provided that such information does not incorporate your data and/or identify your confidential information or include your company's name. Oracle retains all intellectual property rights in such information.

U. Third Party Web Sites, Content, Products and Services

The services may enable you to add links to Web sites and access to content, products and services of third parties, including users, advertisers, affiliates and sponsors of such third parties. Oracle is not responsible for any third party Web sites or third party content provided on or through the services and you bear all risks associated with the access and use of such Web sites and third party content, products and services.

V. Customer Reference

You agree (i) that Oracle may identify you as a recipient of services and use your logo in sales presentations, marketing materials and press releases, and (ii) to develop a brief customer profile for use by Oracle on Oracle.com for promotional purposes.